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10 UNITED STATES DISTRICT COURT FOR  
11 THE NORTHERN DISTRICT OF CALIFORNIA  
12 OAKLAND DIVISION

13 ELAINE L. CHAO, Secretary ) Case No.  
of Labor, UNITED STATES )  
14 DEPARTMENT OF LABOR, )  
Petitioner, ) **MOTION FOR EXPEDITED HEARING**  
v. )  
17 MATTHEW J. DONNELLY d/b/a/ The )  
BUSINESS APPRAISAL INSTITUTE, )  
Respondents. )  
19 )

20 PETITIONER, Elaine L. Chao, Secretary of Labor, United  
21 States Department of Labor, hereby files this Motion for  
22 Expedited Hearing, to request an expedited hearing on her  
23 Petition to Enforce Administrative Subpoena Duces Tecum Issued  
24 by the Employee Benefits Security Administration ("EBSA"), which  
25 has been filed contemporaneously herewith.

26 On March 13, 2008, EBSA issued an Administrative Subpoena  
27 Duces Tecum ("Subpoena") to Matt Donnelly and the Business  
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1 Appraisal Institute ("BAI") to produce documents relevant to  
2 EBSA's Atlanta Regional Office's ongoing investigation of the  
3 Bruister & Associates Employee Stock Ownership Plan (the "ESOP")  
4 and Bruister & Associates Eligible Individual Account Plan (the  
5 "EIAP") (collectively, the "Plans"), including service providers  
6 and others related to the Plans, being conducted pursuant to  
7 ERISA § 504(a), 29 U.S.C. § 1134(a), to determine whether any  
8 person has violated or is about to violate any provision of  
9 Title I of ERISA or any regulation or order promulgated  
10 thereunder. Respondents have acknowledged receipt of the  
11 Subpoena on March 24, 2008, but have refused to comply with the  
12 Subpoena.

13 EBSA's on-site investigation of the Plans began on March  
14 26, 2007. The investigation involves, among other things,  
15 transactions in which the ESOP purchased employer securities  
16 beginning December 30, 2002. Section 413 of ERISA, 29 U.S.C. §  
17 1113, requires that fiduciary breaches resulting in violations  
18 of ERISA be brought within six years of the breach. Thus, using  
19 the most conservative analysis, EBSA may be required to complete  
20 its investigation, submit the case to the Department of Justice  
21 for approval, and then file the case in the next four months.  
22 As discussed in the Secretary's Petition and Memorandum in  
23 Support, the documents requested by the Subpoena are essential  
24 to EBSA completing its investigation. Respondents' utter  
25 failure to comply with the Subpoena severely prejudices the  
26 Secretary's investigation and carry out her statutory  
27 obligations in this matter. Because of the identified time  
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1 considerations, the Secretary respectfully requests an expedited  
2 hearing on the Petition to Enforce Administrative Subpoena Duces  
3 Tecum. As stated in the Certificate of Service, a copy of this  
4 Motion along with the Secretary's Petition to Enforce  
5 Administrative Subpoena, Memorandum in Support, and proposed  
6 order have been served on Respondents' counsel, who stated he  
7 was authorized to accept service.

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9 GREGORY F. JACOB  
10 Solicitor of Labor  
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13 Regional Solicitor  
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15 ROBERT M. LEWIS, JR.  
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18 By: \_\_\_\_\_  
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22 SOL Case No. 08-60050  
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24 Attorneys for Petitioner  
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